United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

In reply, please address to:
Main Interior, Room 6456

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Memorandum

To: Assistant Secretary - Indian Affairs

From: Associate Solicitor, Indian Affairs

Subject: Pooling of Tribal Funds for Investment Purposes

You have inquired as to whether tribal trust funds managed and invested by the Bureau of Indian Affairs may be pooled fc investment purposes.

Approximately $1.2 billion of tribal trust funds are managed by the Bureau in approximately 1500 accounts and invested, on a tribe-by-tribe basis, in certificates of deposit and government securities of varying maturity depending upon tribal cash needs. We understand that the Bureau is considering managing investment of tribal funds as a pool, with supporting accounting showing individual tribal shares in the pool. Tribes would have some options available between long- and short-term investing, and securities would still mature to meet each tribe's cash needs.

Details of the accounting, management and investment of the pool have not yet been developed.

The matter of pooling tribal funds for investment was covered by this office in a January 24, 1978, opinion. A copy is attached. No event or consideration has emerged since 1978 to invalidate our conclusion that pooling, as a general proposition, is defensible, and we feel the attached opinion adequately covers the subject.

A few key issues should receive special attention in designing how the pool will be managed and invested. Tribal funds, whether or not invested as a pool, will have to comply with the terms of 25 U.S.C. § 162a (1982). Specifically, investments must be properly insured. Our experience with the Individual Indian Money (IIM) pool has shown that FDIC, FSLIC, and NCUA can complicate the insurance situation greatly by their various interpretations of coverage for investments from a trust pool. In designing accounting and investment for the tribal pool, we should pay particular attention to meeting requirements of the insuring agencies.

Other design details can be discussed as we proceed--e.g., accounting and reporting to distinguish clearly between each tribal share in the pool; building into the pool any existing rights to withdraw from or liquidate accounts; showing that any loss of control over an account for its sole benefit is outweighed by each tribe's ability to share in the advantages of diversification, spreading risk, lowering overhead, and other advantages of a large investment pool. Careful documentation of such design details will assist greatly in successfully resisting any later challenges.

We stand ready to discuss this matter further and assist in any way that we can.

Tim Vollmann